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ELI LILLY AND COMPANY

By _____

Date _____

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Applicant: BUENO MELENDO Ana Belen Group Art Unit: 1624
Serial No.: 10/599125
Filed: April 8, 2005 Examiner: Brian E. McDowell
PCT Nat'l Entry
Date (if applicable): September 20, 2006
For: AMIDES AS BACE INHIBITORS
Docket No.: X16772

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
INDICATED AT ISSUANCE
(37 C.F.R. § 1.705)

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants submit herewith this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. § 1.705 in the above-referenced issued application, accompanied by the requisite fee under 37 C.F.R. § 1.18(e). Applicants believe that no additional fees are due with the filing of this Request. However, if any fees are required, Applicants hereby authorize the Commissioner to charge such fee, or credit any overpayment in fees, to Deposit Account No. 05-0840. One original and one copy of this request are enclosed.

Applicants received the Notice of Issuance from the U.S. Patent and Trademark Office, mailed on September 9, 2009, with notification that the Patent Term Adjustment under 35 U.S.C. §154(b) is 398 days. By this paper, Applicants hereby petition the U.S. Patent and Trademark Office for reconsideration of the patent

term adjustment calculation to 456 days based on the facts provided herein. This request is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* 580 F.Supp.2d; USPQ.2D (BNA) 1538 (D.D.C. 2008) on September 30, 2008.

The Statement of facts involved:

According to the provisions of 37 C.F.R. § 1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed or within four months after payment of the issue fee. The amount of Adjustment depends on the date that the instant application issued as a patent and should be counted from September 20, 2006, subtracting only time legitimately attributable to applicant delay after the period for reply to the Issue Fee Notification sent concurrently with the Notice of Allowance mailed on September 9, 2009. Therefore, the number of additional days under 37 C.F.R. § 1.702(b) should sum to a total of 58 days of PTA and is calculated as follows:

37 C.F.R. §1.702(a) through (e) is the sum of the following periods:

37 C.F.R. §1.702(a) 398 days

37 C.F.R. §1.702(b) 58 days

37 C.F.R. §1.702(c) 0 days

37 C.F.R. §1.702(d) 0 days

37 C.F.R. §1.702(e) 0 days

Total 1.702 § (a)-(e): 456 days

Issues that were raised or could have been raised in an application for patent term adjustment under 1.705(b) were previously addressed. This request for patent term adjustment raises new issues and is filed within two months of the date the patent issued.

Day after the date that is three years after the filing

per 35 USC 371 or 35 USC 111:

September 21, 2009

Date of issuance:

November 17, 2009

Date of filing of any request for continued

examination:

N/A

Adjustment under 1.705 (a)-(c) as determined or raised prior to issuance: 398

days.

Present request for adjustment under 1.703 (a)-(f), as applicable: 58 days.

Total adjustment, including previously determined patent term adjustment plus the adjustment herein requested: 456 days.

The patent is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704.

Applicants request correction of the patent term adjustment, in accordance with 35 USC 154(b)(1)(B), to add the adjustments attributable to in 37 C.F.R. §1.705 (a)-(c) (as determined or previously raised) with those attributable to 37 C.F.R. §1.703 (a)-(f), set forth herein above. *Wyeth v. Dudas* 580 F.Supp.2d; USPQ.2D (BNA) 1538 (D.D.C. 2008).

Thus, Applicants respectfully submit that the correct total patent term adjustment considering the previous adjustments before issuance of 398 days plus the corrected adjustment noted after issuance of 58 days, should properly result in a total patent term adjustment of 456 days.

Respectfully submitted,
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